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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 395.

THE SPANISH SMACK "PAQUETE HABANA," JUAN
PASOS, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Libel	1	1
Attachment	3	2
Monition	4	2
Letter of R. M. Berry, United States Navy, May 19, 1898.....	6	3
Affidavit of R. F. Tilley, United States Navy.....	7	4
Standing interrogatories.....	8	4
Answers to standing interrogatories by Juan Pazos	11	9
Decree filed May 26, 1898.....	17	12
Order setting aside former decree.....	18	12
Claim and test affidavit of Juan Pasos.....	19	13
Decree of condemnation, filed May 30, 1898.....	22	15
Order for decree of condemnation and sale.....	23	15
<i>Venditioni exponas</i> issued and returned.....	24	15
Writ of <i>venditioni exponas</i> and return.....	25	16
Statement of account	26	16

	Original.	Print.
Deposition of W. V. Bronough, United States Navy.....	27	17
Henry Morrell, United States Navy.....	29	18
B. F. Tilley, United States Navy.....	31	19
J. H. Bull, United States Navy.....	33	20
Motion for appeal and order allowing same.....	35	20
Assignment of errors.....	36	21
Bond on appeal.....	38	22
Order for transmitting original exhibits to Supreme Court.....	42	25
Citation (copy).....	43	25
Clerk's certificate.....	44	26
Citation (original).....	45	26

1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA }
vs. } Prize.
SLOOP "PAQUETE" & CARGO. }

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida :

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the Spanish sloop "Paquete" & cargo, her tackle, apparel and furniture, and cargo, in a cause of prize, alleges—

That pursuant to instructions from the President of the United States Robert Berry, a commander of the United States Navy, in and with the United States ship of war the "Castine," her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as a prize of war the said "Paquete" with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

2 Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said sloop "Paquete," together with her tackle, apparel, furniture, and her cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and motion issue as prayed, returnable Thursday, day of 13th May, A. D. 1898, 10.30 a. m.

Entered as of course.

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

(Endorsed :) In the district court of the United States, southern district of Florida. United States vs. Spanish sloop Paquete & cargo. Libel. Filed Apr. 27th, 1898. E. O. Locke, clerk.

3 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into your custody the schooner Paquete and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 13th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 27th day of April, in the [SEAL.] year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

E. O. LOCKE, *Clerk*,
By J. OTTO, *Deputy*.

(Endorsed :) U. S. district court, southern district of Florida. United States vs. Sloop Paquete and Cargo. Attachment. Filed Apr. 28, 1898. E. O. Locke, clerk.

(Return of Marshal.)

Received the within writ of attachment April 27th, 1898, and fully executed it on the same day by attaching and taking into my custody the Spanish sloop Paquete.

JOHN F. HERR, *U. S. Marshal*,
By ALFRED ATCHINSON, *Deputy*.

4 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Fla., Greeting :

Whereas, on the 27th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court their libel against the Spanish sloop "Paquete" in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. Castine April 25th, 1898;

Wherefore the said libellant prays that the usual process of attachment may issue against the said sloop Paquete, that monition may issue citing all parties having or claiming any interest or property in said sloop Paquete to appear and answer upon oath ali and

singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for service in said cause, and that the said sloop Paquete may be condemned and sold to pay the said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Thursday, the 12th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any *wright*, title, claim, or interest in or to the said sloop Paquete to appear at an admiralty session of said court, to be held at the court-rooms of *of* said court, *of*

5 Key West, in said district, on Thursday, the 12th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two other such copies in the most public places of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 12th day of May, aforesaid, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of said court, at Key West, in said district, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-first.

E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y.*

(Endorsement:) U. S. district court, southern district of Fla. United States *vs.* Sloop Paquete and Cargo. Monition. Filed Apr. 28, 1898. E. O. Locke, clerk.

(Return of Marshal.)

Received the within writ of monition Apr. 27, 1898, and executed it on the same day by reading same to the master of the Spanish sloop Paquete and posting 2 copies, as within commanded.

JOHN F. HERR,
U. S. Marshal, So. Dist. of Fla.,
By ALFRED ATCHINSON,
Deputy U. S. Marshal.

6 KEY WEST, FLORIDA, 19th May, 1898.

SIR: On April 25th last the Spanish fishing sloop "Paquete," of Havana, a blockaded port, was captured by the U. S. S. Castine off the port of Mariel, Cuba, at 6.10 p. m.

2. The prize, with crew, and all papers found on board in a sealed

package were sent in charge of a prize crew to Key West, Florida, and there delivered into the charge of the United States marshal.

Very respectfully,

R. M. BERRY,

Commander U. S. Navy, Commanding.

(Endorsed :) Schooner "Paquete." Claim for prize shares by U. S. S. Castine. Filed Apr. 25, 1898. E. O. Locke, clerk.

7 In the District Court of the United States, Southern District of Florida.

THE UNITED STATES OF AMERICA	} Prize.
vs.	
SLOOP PAQUETE.	

B. F. Tilley, being duly sworn, says: My name is Benjamin F. Tilley. I am an American, in U. S. Navy, on board U. S. S. Newport; that on the 25th day of April, A. D. 1898, the Spanish sloop Paquete was captured as a prize of war by the U. S. S. Castine, commanded by Robert Berry, commander U. S. N.; that said sloop Paquete was delivered by said Robert Berry to Rear Admiral Wm. T. Sampson (commanding North Atlantic squadron), together with the documents and other papers found on said sloop Paquete; that said sloop Paquete, with said documents and papers aforesaid, were turned over to affiant, as prize master, with instruction to proceed to Key West, Fla.; that said papers and documents this day delivered to G. Bowne Patterson, prize commissioner, at Key West are the identical documents and papers pertaining to the sloop Paquete delivered to him, and that they are in the same condition as when delivered to him.

B. F. TILLEY,
Commander, U. S. Navy.

Sworn to and subscribed before me this 25th day of April, A. D. 1898.

G. BOWNE PATTERSON,
U. S. Prize Commissioner.

(Endorsed :) U. S. vs. Schr. Paquete. Affidavit of prize master. Filed Apr. 25, 1898. E. O. Locke, clerk.

8

Standing Interrogatories

Established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject?

Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship-in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed,

and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

9 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the pur

port thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or person-who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any
 10 license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use?

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or

at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

11 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA

vs.

SPANISH SLOOP PAQUETE AND HER CARGO.

} Prize.

Deposition of Juan Pazos, a witness produced, sworn, and examined *in preparatorio* on the 20th day of May, A. D. 1898, at the United States court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Paquete" and her cargo.

1. To the first interrogatory deponent answers:

My name is Juan Pazos. I was born in Spain. I have lived for seven years last past in Cuba. I now live in Havana, Cuba. I have lived there for 14 years. I am a Spanish subject. I am a married man. My wife and family live in Spain.

2. To the second interrogatory deponent answers:

I was present at the time of capture of the vessel. The vessel has no license or commission; she is a coasting vessel. I have a license

to fish, issued by the Spanish government. I gave it to the prize master.

12 3. To the third interrogatory deponent answers :

The vessel was captured April 25th, 1898, near Mariel, and we were going to Havana when captured. We were captured because of the war between Spain and the United States. We were carried into the port of Key West. The vessel sailed under the Spanish flag. We had no other colors on board. There was no resistance made at the time of the capture. The vessel which captured us was a U. S. warship. I do not know her name. There were some other ships in sight, but I do not know their names.

4. To the fourth interrogatory deponent answers :

I am the master of the vessel. I took possession of her at Havana on the 25th day of March, 1898. The owner, Justa Galvan, delivered possession to me.

5. To the fifth interrogatory deponent answers :

The vessel is of 25 tons burden ; three mariners, including myself. I took them on board at Havana. I shipped them.

6. To the sixth interrogatory deponent answers :

None of the officers or crew had any interest in the vessel, but the crew and captain had an interest in cargo of fish, $\frac{2}{3}$ for the boat's crew and $\frac{1}{3}$ for the owner of the boat. I have known the boat for 5 years. I first saw her in Havana. She was built in Key West.

13 7. To the 7 interrogatory deponent answers :

The vessel is named the "Paquete Habana." I know she has been called by that name ever since I knew her. She had another name at one time. I think it was "Restless." This boat was a fishing smack and was engaged in running out of Havana for fishing trips.

8. To the 8th interrogatory deponent answers :

She had a cargo of fish when she was captured. We, the crew, caught the fish out of the sea. We had 40 kintals of fish on board at the time of the capture.

9. To the 9th interrogatory deponent answers :

The owner of the vessel is Justa Galvan. She lives in Havana, and is a Spaniard by birth. The present owner has been in possession for five years.

10. To the 10th interrogatory deponent answers :

I do not know anything about any bill of sale.

11. To the 11th interrogatory deponent answers :

The cargo was put on board as we caught the fish from the the ocean.

12. To the 12th interrogatory deponent answers :

I have already answer-d that question in my answer to the sixth interrogatory.

14 13. To the 13th interrogatory deponent answers :

There was no bill of lading.

14. To the 14th interrogatory deponent answers :

There are no bills of lading or documents or invoices in the U. S. relating to the vessel and her cargo.

15. To the 15th interrogatory deponent answers :

There was no charter-party for this voyage.

16. To the 16th interrogatory deponent answers :

There was only a crew list on board at the time of the capture, which I delivered to the prize master.

17. To the 17th interrogatory deponent answers :

The said ship has never before been captured or condemned as prize.

18. To the 18th interrogatory deponent answers :

I have sustained a loss by the capture of this ship because I owned a part of the cargo. I have not received any indemnity or promise of indemnity for any loss which I have sustained or might sustain by reason of this capture.

19. To the 19th interrogatory deponent answers :

The ship and cargo is not insured.

20. To the 20th interrogatory deponent answers :

In case we had arrived at our port of destination and the goods had been unladen they would have belonged to the persons named.

15 21. To the 21st interrogatory deponent answers :

The cargo was taken from Spanish waters.

22. To the 22nd interrogatory deponent answers :

The cargo was taken from the sea.

23. To the 23rd interrogatory deponent answers :

There are no bills of lading or invoices.

24. To the 24th interrogatory deponent answers :

The crew book was delivered to the prize master.

25. To the 25th interrogatory deponent answers :

The bulk was broken at Key West by the U. S. marshal.

26. To the 26th interrogatory deponent answers :

There were no passengers or other persons of any description on the vessel at the time of the capture except the crew.

27. To the 27th interrogatory deponent answers :

She had no passports or sea briefs.

28. To the 28th interrogatory deponent answers :

I cannot write much. I have not *since* or written any letters or papers since I was captured.

29. To the 29th interrogatory deponent answers :

We were sailing toward Havana when we were captured. She was about 11 miles.

16 30. To the 30th interrogatory deponent answers :

I do not know anything about and bill of sale. If the vessel was released she would belong to the person before stated to be the owner.

31. To the 31st interrogatory deponent answers :

There were no cannons of and description or arms or ammunition on board.

32. To the 32nd interrogatory deponent answers :

I have already stated all that I know concerning the true property and destination of the ship and cargo.

JUAN PAZOS.

Sworn to and subscribed before me May 20th, 1898.

J. M. PHIPPS,
Prize Commissioner.

(Endorsed :) Standing interrogatories. Filed May 26th, 1898.
E. O. Locke, clerk.

17 In the District Court of the United States, Southern District of Florida.

UNITED STATES	} Prize.
vs.	
SLOOP "PAQUETE" AND CARGO.	

This cause having come on to be heard upon the libel and proofs and testimony taken *in prepar-torio*, and all due proceedings having been had and proclamation having been duly made in open court, and no persons appearing to claim any portion of said sloop "Paquete" or cargo, and a decree *pro confesso* having been duly entered for default of claimants, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property and were attempting to violate the blockade of Havana, now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo are condemned and forfeited to the United States as lawful prize of war.

It is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, subject to the order of this court, as required by law.

— — —, Judge.

Key West, Florida, May 23rd, 1898.

(Endorsed :) U. S. district court, southern district of Fla. United States vs. Sloop "Paquete" and Cargo. Decree. Filed May 26, 1898. E. O. Locke, clerk.

18 The United States District Court, Southern District of Florida.

THE UNITED STATES	}
against	
THE "PAQUETE HABANA."	

A motion having been made in behalf of the owners of the above-named vessel to open the decree of condemnation and sale herein and to allow a claim to be filed, and said motion having been argued by counsel for the vessel and for the Government, it is now—

Ordered that the decree of condemnation and sale heretofore made herein be vacated and set aside, and that leave be, and hereby

is, granted to the owners of the vessel to file a claim in the name of the master on or before May 30th, 1898.

Key West, May 28, 1898.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsed :) U. S. district court, southern dist. of Fla. United States *vs.* Schr. Paqueta. Order sitting former decree aside. Filed May 28, 1898. E. O. Locke, clerk.

19 United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA }
 against } Claim.
THE "PAQUETE HABANA."

And now comes Juan Pasos, master and lawful bailee of the fishing boat "Paquete Habana," and intervening for the interest of Justa Galban, widow, in the said fishing boat, her tackle, apparel, and furniture, and in her fish, as the same are attached as prize at the instance of the United States, he claims the same accordingly; and the said claimant avers that before and at the time of the alleged capture of the said vessel the above-named "Justa Galban," widow, was the *bona fide* owner of the said vessel, her tackle, apparel, and furniture, and of one-third of said fish, and that the other two-thirds of said fish belonged to this claimant and the other members of the crew, all of whom are Cubans, who prior to the recognition of Cuban independence were Spanish subjects, and that no other person is the owner of said vessel or fish, and that the claimant is the lawful bailee of both the vessel and fish. He further avers that said vessel and fish under the general law and the proclamation of the President of April 26th, 1898, were privileged and exempt from capture and condemnation as a fishing vessel, with her catch, and he denies that the vessel and fish are lawful prize of war.

Wherefore we pray leave to defend accordingly and to show cause why the vessel and fish at the time of said capture were not liable to seizure and condemnation as prize of war.

JUAN PASOS.

Sworn to and subscribed before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

CONVERS & KIRKLIN,
Proct. for Claimants.

20 United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA }
against } Test Affidavit.
 THE "PAQUETE" HABANA. }

SOUTHERN DISTRICT OF FLORIDA, ss :

Juan Pasos, being duly sworn, duly says :

1. I am master of the fishing boat Paquete Habana and lawful bailee of the vessel and her fish. The vessel belongs to Justa Galban, widow, of Havana, a native-born Cuban domiciled in Cuba at the time of the recognition of the independence of the Cuban people by Congress, and is used exclusively in the coast waters of Cuba for catching small fish. Her keel length is about 43 feet and her tonnage about 25 tons. The fishing is done on shares, one-third of the catch belonging to the owner and two-thirds to the crew. The fish now on board are thus owned. They are kept and sold alive.

2. I left Havana on the last trip March 25th and proceeded to Cape San Antonio, on the coast of Cuba, in coast waters between the reefs. We fished there 25 days and then started back to Havana with the catch. We were stopped by the blockading squadron near Havana on April 25th, 1898. Prior to said time we were unaware of the existence of war or of any blockade. We were stopped by the United States ship "Castine" and brought into Key West as prize of war. No efforts was made by the vessel to run the blockade after we learned of its existence.

21 3. I have been master of the said vessel for 4 years ; then I was off her 2 years, and captain again 1 month. During that time the vessel has carried no cargo save her catches of fish, and has carried no passengers.

Her crew consists of 3 persons, including the captain. She is of sloop rig, and has one mast.

JUAN PASOS.

Sworn to before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

(Endorsed :) U. S. district court, southern dist. of Fla. U. S. vs. Paquete Habana. Claim and test affidavit. Convers & Kirlin, proctors for cl't. Filed May 30, 1898. E. O. Locke, clerk.

22 In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES }
vs. } Prize.
 SLOOP "PAQUETE" AND CARGO. }

This cause having come on to be heard upon the libel and proofs and testimony taken *in preparatorio*, and all due proceedings having been had, and proclamations having been duly made in open court,

and Juan Pasos having appeared and claimed said sloop "Paquete" and cargo upon the grounds of her being a fishing vessel and not liable to capture, and the case being fully heard, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property—

Now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, Judge.

Key West, Fla., May 30th, 1898.

(Endorsed :) U. S. district court, southern dist. of Fla. United States *vs.* Sloop Paquete. Decree of condemnation. Filed May 30, 1898. E. O. Locke, clerk.

23 In the District Court of the United States, Southern District of Florida.

THE UNITED STATES	} Prize.
<i>vs.</i>	
SLOOP "PAQUETE" AND CARGO.	

This cause coming on to be heard and a decree *pro confesso* having been entered (and final decree of condemnation and forfeiture pronounced)—

Now, on motion of Convers and Kirlin, said decree is set aside, and — is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered, adjudged, and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, Judge.

Key West, Florida, May 30th, 1898.

(Endorsed :) U. S. district court, southern dist. of Fla. United States *vs.* Sloop Paquete. Decree. Filed May 30, 1898. E. O. Locke, clerk.

24 Whereupon a writ of *venditioni exponas* was issued to the marshal of said district, commanding him forthwith to sell at public auction the said prize vessel "Paquete Habana," her tackle, &c., and to deposit the proceeds thereof with the assistant treasurer of the United States at New York, to the credit of said court.

Which writ was afterwards by the marshal returned, showing the proceeds of said vessel to be the sum of four hundred and ninety dollars, which sum was by the marshal deposited as commended.

25 United States District Court, Southern District of Florida.

The President of the United States to John F. Horr, marshal of said district, Greeting:

Whereas the fishing smack Paquete Habana has been libelled in said court and is now in custody of this court by virtue of a writ of attachment issued out of said court; and whereas such proceedings have been had — the said vessel and cargo have been ordered by decree of said court to be sold: Now, therefore, you are hereby commanded after due notice to sell at public auction the said fishing smack "Paquete Habana" and make return thereof to this court and deposit the proceeds of sale in the assistant treasury of the United States at New York to be disposed of according to law.

Witness the Honorable James W. Locke, judge of said court, at Jacksonville, this 26th day of May, A. D. 1898.

[SEAL.]

E. O. LOCKE, Clerk.

(*Marshall's Return.*)

Receive the within writ this 26th day of May, 1898, and executed same by selling said vessel "Paquete Habana" at public auction for \$490.00 and deposited the said sum with the assistant treasurer of the United States, as directed therein.

Sep. 28th, 1898.

JOHN F. HERR,
U. S. Marshall.

(Endorsed:) United States vs. Smack "Paquete." *Vend. ex.*
Issued May 26th, 1898. Returned & filed Sep. 28th, 1898. E. O. Locke, clerk.

26

Statement.

"Paquete Habana."

1899.

July —.	Deposited proceeds sale with ass't treas. at N. Y...	490
Aug. 11.	Drew a/c watchman.....	224.00
"	" prize com.....	28.02
"	" interpu-ter	5.00
"	" marshal... ..	68.69
"	" clerk	42.00

- 27 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
 SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of W. V. Bronough, a witness produced, sworn, and examined on the 31 day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is W. V. Bronough; my age, 42 years; my rank, lieutenant U. S. Navy, and I am now serving as watch officer of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as watch officer.

3. Shortly before 6 p. m. of the 25th day of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete," of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the captures of the above-mentioned vessels the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

28 The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. "Newport" was within signal distance at the time the "Paquete" was captured.

By the word- "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer to No. 5.

7. See answer to No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

W. V. BRONOUGH,
 Lieutenant U. S. Navy.

Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
Commander U. S. Navy, Commanding
Officer U. S. S. "Castine."

(Endorsed :) "Paqueta." Filed Jun- 15, 1898. E. O. Locke,
clerk.

29 In the District Court of the United States in and for the
Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of Henry Morrell, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is Henry Morrell; my age, 44 years; my rank, lieutenant U. S. S. Navy, and I am now serving as navigator of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as navigator.

3. Shortly before 6 p. m. of the 25th of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete" of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the capture of the above-mentioned vessel the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

30 The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. Newport was within signal distance at the time the "Paquette" was captured.

By the words "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer to No. 5.

7. See answer to No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

H. MORRELL,
Lieutenant U. S. Navy.

Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
*Commander U. S. Navy, Commanding
Officer U. S. S. "Castine."*

(Endorsed :) "Paquette." Filed Jun- 15, 1898. E. O. Locke, clerk.

31 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA	} Prize.
<i>vs.</i>	
SPANISH SLOOP PAQUETE.	

Deposition of B. F. Tilley, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. Newport, on the standing interrogatories established by the United States court in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. Newport for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is B. F. Tilley, commander U. S. Navy; commanding U. S. S. Newport, North Atlantic station; block-ing ports on north coast of Cuba.

2. I was attached to and on board the U. S. S. Newport, commanding same.

3. About 6 p. m., April 25th, 1898, the U. S. S. Castine took as prize sloop Paquette. The Newport was engaged at that time in taking as prize schooner Pironeo. The Paquette was first chased by the Newport, but as it was considered possible for the Castine to capture her the Newport was headed for the Pironeo. The Newport towed the Paquette to Key West.

4. The Newport and Castine were in company, and the Newport left to chase the sails.

32 5. Within easy reading of ordinary flag signals.

B. F. TILLEY.

Sworn to and subscribed before me this June 15th, 1898.

J. H. BULL,
Lieutenant U. S. N., Executive Officer U. S. S. Newport.

(Endorsed :) Filed Jun- 15th, 1898. E. O. Locke, clerk.

33 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA }
 vs. } Prize.
 SPANISH SLOOP PAQUETE.

Deposition of J. H. Bull, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. Newport, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of U. S. S. Newport for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is J. H. Bull; lieutenant U. S. Navy, executive officer U. S. S. Newport, North Atlantic station; blockading ports on north coast of Cuba.

2. To the second interrogatory deponent answers:

I was attached to and on board the U. S. S. Newport, executive officer of same.

3. About 6 p. m., April 25th, 1898, the U. S. S. Castine took as prize the sloop Paquete. The Newport was engaged at the time in taking as prize the schooner Pironeo. The Paquete was first chased by the Newport, but as it was considered possible for the Castine to capture her the Newport was headed for the Pironer. The Newport towed the Paquete to Key West.

4. The Newport and Castine were in company, and the Newport left to chase the sails.

34 5. Within easy reading of ordaniry flag signals.

J. H. BULL.

Sworn to and subscribed before me this June 15th, 1898.

B. F. TILLEY,

Commander U. S. Navy, Com'd'g U. S. S. Newport.

(Endorsed :) Filed June 15th, 1898. E. O. Locke, clerk.

35 United States District Court, Southern District of Florida.

THE UNITED STATES, Libellant, Appellees, }
 against } Prize.
 THE FISHING SMACK PAQUETE HABANA; JUAN PASOS, }
 Claimant, Appellant.

And now comes Juan Pasos, claimant, —, considering himself ag-grieved by the decision and decree of condemnation herein and alleging error in the said decree, appeals therefrom to the Supreme Court of the United States. He presents herewith an assignment of errors complained of and a bond for costs, with surety, in the sum approved by the court, and thereupon prays that his said appeal may be allowed, and that the record and all proceedings herein may

be duly certified to the Supreme Court of the United States in accordance with the rules and practice in such cases made and provided, to the end that the said appeal may be heard and determined by the said court.

Dated August 15th, 1899.

JUAN PASOS, *Claimant*,
By CONVERS & KERLIN,
His Proctors.

CONVERS AND KERLIN,
Proctors for Appellant.

Upon reading the foregoing notice and prayer of appeal and the assignment of errors and bond on appeal, it is ordered that the appeal of the claimant, Juan Pasos, be, and the same is hereby, allowed.

Dated August 15th, 1899.

JAMES W. LOCKE, *U. S. Judge.*

36 United States District Court, Southern District of Florida.

THE UNITED STATES, Appellee,	} Prize.
<i>against</i>	
THE FISHING SMACK PAQUETE HABANA; JUAN PASOS, Claimant, Appellant.	

Assignment of Error.

The claimant assigns error to the final decision and decree of the United States district court for the southern district of Florida, herein as follows:

First. For that the court omitted and refused to hold that the "Paquete Habana" was not subject to condemnation as lawful prize of war.

Second. For that the court omitted and refused to find that the vessels, whilst engaged in fishing, as disclosed by the record, were exempt from capture under the terms of the President's proclamation dated April 26th, 1898, providing that the war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, in accordance with — the fishing vessels in the situation of the Paquete Habana at the time of her capture are exempt from capture as prize.

Third. For that the court omitted and refused to hold that the vessels and cargoes were the property of Cubans, whose freedom and independence was recognized by the joint resolution of Congress approved April 20th, 1898, and entitled accordingly to exemption from capture as the property of neutrals, or persons entitled to the rights, privileges, and immunities of neutrals.

Fourth. For that the court omitted and refused to allow further proofs of the grounds for the exemption from capture set forth in the claim and test affidavits.

CONVERS & KIRLIN,
Proctors for Appellant.

Endorsed: Order allowing appeal and assignment of errors.
Filed Aug. 18th, 1899. E. O. Locke, clerk.

38 District Court of the United States, Southern District of Florida.

THE UNITED STATES OF AMERICA }
vs. }
FISHING SMACK "PAQUETE HABANA." }

Know all men by these presents that we, Juan Pasos, as principal, and the American Surety Company of New York, of 100 Broadway, New York city, New York, and also represented by manager and attorney at Key West, Florida, as surety, are held and firmly bound unto The United States of America, the plaintiffs in the above-entitled action, in the sum of two hundred and fifty dollars, to be paid to the United States of America or their assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas the above-bounden Juan Pasos has appealed to the Supreme Court of the United States from the decree of the United States district court, southern district of Florida, bearing date the 30th day of May, 1898, in a suit in which The United States of America are plaintiffs and the Fishing Smack "Paqueta Habana" is defendant:

Now, therefore, the condition of this obligation is such that if the above-bounden appellant, Juan Pasos, shall prosecute said appeal with effect and pay all costs which may be awarded against him as said appellant if the appeal is not sustained, then this obligation shall be void; otherwise the same shall remain in full force and effect.

JUAN PASOS,
By CONVERS & KERLIN, *Proctors*.
[SEAL.] AMERICAN SURETY COMPANY OF
NEW YORK,
By DAVID B. SICKELS, *Vice-President*.
SAMUEL S. PERRY, *Attorney*.

[Three documentary stamps, 4, $\frac{1}{2}$, 3.]

STATE AND COUNTY OF NEW YORK, ss:

On this 14th day of August, 1899, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instru-

ment; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by law; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said corporation; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said David B. Sickels, vice-president.

[SEAL.]

K. J. PIERCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk Co.

40 At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each of them is hereby authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company, in the performance of contracts other than insurance policies and executing or guaranteeing its business of guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, ss:

I, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolutions.

Given under my hand and the seal of the company, at the city of New York, this 14th day of Aug., 1899.

[SEAL.]

SAMUEL S. PERRY, *Attorney.*

American Surety Company of New York.

Incorporated April 14th, 1884.

General offices, 100 Broadway.

Financial Statement June 30th, 1899.

Resources :

Real estate and improvements	\$3,013,930.66
Stocks and bonds.....	1,107,979.10
Bills receiv.....	114,797.40
Cash in banks and offices.....	815,776.94
Premiums in course of collection.....	192,736.02
Accrued interest and rents	38,466.51
	<hr/>
	\$5,283,686.63

Liabilities :

Bills and accounts payable.	\$49,129.13
Claims in process of adjustment.....	209,907.64
41 Premiums reserve requirement....	626,233.97
Undivided profits.....	898,415.89
Surplus	1,000,000.00
Capital stock... ..	2,500,000.00
	<hr/>
	\$5,283,686.63

STATE OF NEW YORK, }
County of New York, } ss :

David B. Sickels, being duly sworn, says that he is vice-president of the American Surety Company of New York; that said company is a corporation duly created, existing, and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of the said State applicable to said company, and is duly qualified to act as surety under such laws; that said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13th, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company is worth \$1,000.00 over and above all its debts and liabilities and such exemptions as may be allowed by law.

DAVID S. SICKELS.

Subscribed and sworn before me this 14th day of Aug., 1899.

[SEAL.]

K. J. PEIRCEY,
Notary Public.

Endorsed: Bond on appeal. The within bond approved as to amount and sufficiency of surety. James W. Locke, judge. Filed Aug. 18, 1899. E. O. Locke, clerk.

42 District Court of the United States, Southern District of Florida.

THE UNITED STATES
vs.
THE SMACK "PAQUETTE." } Prize.

Claimants of the cargo herein having appealed from the decree of condemnation herein rendered to the Supreme Court of the United States, it is ordered that the clerk of this court transmit to the Supreme Court of the United States for inspection, together with the apostles herein, the original documents of the ship and cargo in his official keeping, the same to be returned to this court when no longer required.

JAMES W. LOCKE, *Judge.*

August 28th, 1899.

43 UNITED STATES OF AMERICA, ss:

To United States, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, D. C., on Sept. 21st, 1899, pursuant to an order allowing appeal entered and filed in the clerk's office of the district court of the United States for the southern district of Florida, wherein the Spanish Smack "Paqueta Habana," Juan Pasos, claimant, is appellant and The United States of America, libellant, is appellee, to show cause, if any there be, why the judgment against the said "Paqueta Habana" mentioned, entered on the thirtieth day of May, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable James W. Locke, judge district court United States, this 22nd day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

JAMES W. LOCKE,
Judge U. S. District Court, Southern District of Florida.

Endorsed: Spanish Smack "Paqueta Habana," appellant, vs. The United States, appellee. Citation. Filed Sept. 1st, 1899. E. O. Locke, clerk.

Marshal's Return.

Received this citation Aug. 25th, 1899, and executed same by service on H. H. Buckman, ass't United States attorney, of certified copy thereof, at same time exhibiting to him this the original,

at Jacksonville, Fla., the 1st day of Sept., A. D. 1899, the United States attorney being absent from the city on official business.

JOHN F. HERR, *U. S. Marshal*,
By KATHARINE PILLSBURY,
Office Deputy.

44 In the United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA	} In Prize.
<i>vs.</i>	
SPANISH "PAQUETE HABANA" AND CARGO.	

I, Eugene O. Locke, clerk of the above-mentioned court, hereby certify the foregoing pages, numbered from one to forty-three, inclusive, constitute a complete transcript of the record of the proceedings, proofs, and assignment of errors in the above-entitled cause, as appears from record and files of this office.

Seal District Court of the	Witness my hand and the seal of this
United States, Southern	said court this second day of September,
District of Florida.	1899, at Jacksonville, in said district.

EUGENE O. LOCKE, *Clerk*,
By LOUIS STARKE, *Deputy.*

45 UNITED STATES OF AMERICA, ss :

To United States, Greeting :

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, D. C., on Sept. 21, 1899, pursuant to an order allowing appeal entered and filed in the clerk's office of the district court of the United States for the southern district of Florida, wherein the Spanish Smack "Paquete Habana," Juan Pasos, claimant, is appellant and The United States of America, libellant, is appellee, to show cause, if any there be, why the judgment against the said "Paquete Habana" mentioned, entered on the thirtieth day of May, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Seal District Court of the	Witness the Hon. James W. Locke,
United States, Southern	judge district court United States, this
District of Florida.	22nd day of August, in the year of our
	Lord one thousand eight hundred and
	ninety-nine.

JAMES W. LOCKE,
Judge U. S. Dist. Court, Southern District of Florida.

[Endorsed :] Mar. d't, 327. United States district court, so. dist. Fla. Spanish Smack "Paquete Habana," appellant, vs. The United States, appellee. Citation. Filed Sep. 1, 1899. E. O. Locke, clerk.

Received this citation Aug. 25, 1899, and executed same by service on H. H. Buckman, ass't United States attorney, of certified copy thereof, at same time exhibiting to him this the original, at Jacksonville, Fla., the 1st day of Sept., A. D. 1899, the United States attorney being absent from the city on official business.

JOHN F. HERR, *U. S. Marshal*,
By KATHARINE PILLSBURY,
Office Deputy.

Endorsed on cover: File No., 17,509. S. Florida D. C. U. S. Term No., 395. The Spanish Smack "Paquete Habana," Juan Pasos, claimant, appellant, *vs.* The United States. Filed September 9th, 1899.



TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1899

No. 366

THE SPANISH SCHOONER "LOLA," TOMAS BETANCOURT,
CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

FILED SEPTEMBER 9, 1899.

(17,510.)

(17,510.)

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Libel.	1	1
Attachment.	3	2
Monition.	4	2
Affidavit of Gustave Sablestrom	6	3
Standing interrogatories.	7	4
Answers to standing interrogatories by Tomas Betancourt	10	9
Decree of condemnation, filed May 30, 1898.	16	11
Order setting aside former decree.	17	12
Claim and test affidavit of Thomas Betancourt.	18	12
Decree	21	14
<i>Venditioni exponas</i> issued and returned.	22	14
Writ of <i>venditioni exponas</i> and return.	23	15
Statement of account	24	15
Motion for appeal and order allowing same.	25	15
Assignment of errors	26	16
Bond on appeal.	28	17
Order for transmitting original exhibits to Supreme Court.	32	20
Citation (copy).	33	20
Clerk's certificate	34	21
Citation (original).	35	21



- 1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA }
vs. } Prize.
 THE LOLA. }

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida :

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the sailing vessel "Lola," her tackle, apparel, furniture, and cargo, in a cause of prize alleges—

That pursuant to instructions from the President of the United States H. W. Lyon, commander of the United States Navy, in and with the United States ship of war the "Dolphin," her officers and crew, did, on the 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as a prize of war the said sailing vessel "Lola" with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subjected to be condemned and forfeited to the United States as such.

- 2 Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel and cited to appear and claim the same ; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and that all due proceedings being had the said "Lola," together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Fla.

Let attachment and monition be issued as prayed, returnable Wednesday, day of 18th May, A. D. 1898, at 10.30 a. m.

Entered as of course.

E. O. LOCKE, *Clerk*,
 By J. OTTO, *Deputy Clerk*.

(Endorsed :) In the district court of the United States, southern district of Florida. United States *vs.* Sailing Vessel Lola and Cargo. Libel. Filed Apr. 30, '98. E. O. Locke, clerk.

UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into custody the Spanish schooner *Lola* and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize ; and how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 18th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 30th day of April, in the [SEAL.] year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-first.

E. O. LOCKE, *Clerk*,
By J. OTTO, *Deputy Clerk*.

(Endorsed :) U. S. district court, southern dist. of Fla. United States vs. *Schr. Lola*. Attachment. Filed May 2, 1898. E. O. Locke, clerk.

(*Return of Marshal.*)

Received the within writ of attachment Apr. 30, 1898, and duly executed same as within commanded by attaching and taking unto custody the within-named Spanish schooner "*Lola*."

JOHN F. HARR,
U. S. Marshal, So District of Fla.

UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

Whereas, on the 30th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court their libel against the Spanish sailing vessel "*Lola*" in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. *Dolphin* Apr. 27th, 1898, as a prize of war ;

Wherefore the said libellant pray- that the usual process of attachment may issue against the said sailing vessel *Lola*, that monition may issue citing all parties having or claiming any interest or prop-

erty in said sailing vessel Lola to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for service in said cause, and that the said Lola may be condemned and sold to pay said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Wednesday, the 18th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said Lola to appear at an admiralty
5 session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Wednesday, 18th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two other such copies in the most public places of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 18th day of May, aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 30th day of April, in the
[SEAL.] year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-first.

E. O. LOCKE, *Clerk*,
By J. OTTO, *Dep'y Clerk*.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. Lola. Monition. Filed May 2, 1898. E. O. Locke, clerk.

(Return of Marshal.)

Receive the within writ of monition April 30, 1898, and duly executed the same as within commanded by reading the original to master and posting 2 copies, as within commanded.

JOHN F. HERR,
U. S. Marshal, So. Dist. of Fla.

6 In the District Court of the United States, Southern District of Florida.

SCHR. LOLA. Prize.

Gustav Sablestrom, being duly sworn, says: My name is Gustav Sablestrom. I am quartermaster U. S. Navy, on board U. S. S.

Dolphin; that on the 27th day of April, A. D. 1898, the Spanish Sch. Lola was captured as a prize of war by the U. S. S. Dolphin, commanded by H. W. Lyon; that said Sch. Lola was delivered by said H. W. Lyon to Rear Admiral Wm. T. Sampson (commanding North Atlantic squadron), together with the documents and other papers found on said Sch. Lola; that said Sch. Lola, with said documents and papers aforesaid, were turned over to affiant, as prize master, with instruction to proceed to Key West, Florida; that said papers and documents this day delivered to J. M. Phipps, prize commissioner, at Key West, Florida, are the identical documents and papers pertaining to the said — delivered to him, and that they are in the same condition as when delivered to him.

GUSTAV SABLESTROM.

Sworn to and subscribed before me this 30th day of April, A. D. 1898.

J. M. PHIPPS,
Prize Commissioner.

(Endorsed :) Sch. Lola. Prize. Aff't prize master. Filed Apr. 30, 1898. E. O. Locke, clerk.

7

Standing Interrogatories

Established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what

month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

8 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the port thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17th interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already

received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were and are, all the passports, sea briefs,

charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or person-who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any
 9 license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use?

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and

by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

10 In the United States District Court in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA

vs.

THE SPANISH STEAMER "LOLA" AND HER CARGO. } Prize.

Deposition of Tomas Betancourt, a witness produced, sworn, and examined in *preparatorio* on the 21st day of May, A. D. 1898, at the United States court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Lola" and her cargo.

1. To the first interrogatory deponent answers:

My name is Tomas Betancourt. I was born in the Canary islands, and during the last seven years have lived in Havana, where I have lived for 21 years. I am a married man. My family live in Cuba. I am a subject of Spain.

2. To the second interrogatory deponent answers:

I was present at the time of the taking and seizing of the ship. She has no commission or license.

3. To the 3d interrogatory deponent answers:

11 I was captured near Bahia Honda, Cuba, on the 27th day of April, A. D. 1898. We were captured on account of the war between Spain and the United States. Our boat sailed under the Spanish flag. We had no other colors on board. There was no resistance made at the time of the capture. The U. S. S. "Dolphin" captured us. There were no other vessels present.

4. To the 4th interrogatory deponent answers:

I was appointed commander of the ship by Severo Gonzales, the owner of the boat. I took possession of her in Havana about four years ago. The owner delivered possession. The owner lives in Cuba.

5. To the 5th interrogatory deponent answers:

The vessel is about 55 tons burden. There were six mariners on board, including myself. I only have one now. They are all Spanish subjects. They all came on board from different ports and I hired them.

6. To the 6th interrogatory deponent answers:

The crew had an interest in the cargo, but not in the vessel. One-third was for the ship and two-thirds for the crew. I was

master of the ship at the time of her capture. I have known the vessel for about 15 years. I do not know where she was built.

7. To the 7th interrogatory deponent answers:

The vessel is named "Lola." She has been called by that name for about 9 years. She was once called the Lizzie "Roy" Elveda.

8. To the 8th interrogatory deponent answers:

She had on board a cargo of live fish, which were caught from the waters of ocean. They were caught about eight days before we were captured. We had about 10,000 pound- of fish.

9. To the 9th interrogatory deponent answers:

The vessel at the time of her seizure was owned by Severo Gonzales. He was born in the Spain and now lives in Havana, Cuba. He has lived there for a long time. He is a Spanish subject. He has owned the boat about ten years.

10. To the 10 interrogatory deponent answers:

I do not know anything about the bills of sales.

11. To the 11 interrogatory deponent answers:

The fish were caught from the sea and were put on board as they were caught.

12. To the 12 interrogatory deponent answers:

Two-thirds of the cargo belonged to the crew and the other third belonged to the owner of the vessel.

13. To the 13 interrogatory deponent answers:

There were no bills of lading signed.

14. To the 14 interrogatory deponent answers:

There are not in the United States any bills of lading or other papers relating to the ship and her cargo.

15. To the 15 interrogatory deponent answers:

There was no charter-party signed for the voyage.

16. To the 16 interrogatory deponent answers:

We only had crew and muster-roll on the said vessel when she was captured; they were the same which we had on board after clearing from our last port of entry.

17. To the 17 interrogatory deponent answers:

The ship has never before been seized and condemned as a prize.

18. To the 18 interrogatory deponent answers:

I have sustained a loss by the capture of this ship and her cargo. I have not received any indemnity or promise of indemnity for any loss which I have sustained or may sustain.

19. To the 19 interrogatory deponent answers:

The ship and cargo are not insured.

20. To the 20 interrogatory deponent answers:

I have already stated that the cargo was the property of the crew and the owner. If it were at the port of its destination it would be theirs and none other.

21. To the 21 interrogatory deponent answers:

The cargo was manufactured, produced, and grown in waters of the ocean off the coast of Cuba.

22. To the 22 interrogatory deponent answers:

The cargo was taken from the sea.

23. To the 23 interrogatory deponent answers :

There are no papers of any description concerning said vessel and her cargo except those found on board.

24. To the 24 interrogatory deponent answers :

The prize master took all the papers and documents of the ship.

25. To the 25 interrogatory deponent answers :

The bulk was not broken during the voyage, but since the capture the said cargo was taken by the U. S. marshal.

26. To the 26 interrogatory deponent answers :

There were no person- of any description on board the boat other than the crew.

27. To the 27 interrogatory deponent answers :

All the papers found on board the boat are entirely true and fair.

15 28. To the 28 interrogatory deponent answers :

I have not written or signed any letters or papers concerning the ship and her cargo.

29. To the 29 interrogatory deponent answers :

The ship was steering her course toward Bahia Honda ; her course was not altered upon the appearance of the vessel which made the capture. On the day before I was captured, viz., 26th day of April, 1898. I was captured by the U. S. S. " Cincinnati," and warned not to go in Havana. I changed my course and put for Bahia Honda, where I was told I would be allowed to land. The next morning the U. S. S. " Dolphin " came up and took the ship.

30. To the 30 interrogatory deponent answers :

I do not know how many times the vessel has been transferred or anything about the bills of sale.

31. To the 31 interrogatory deponent answers :

There were no cannons of any description on board the boat, and no arms or ammunition of any kind.

32. To the 32 interrogatory deponent answers :

I have already told all I know concerning this ship and her cargo, and the true property and destination of the same.

TOMAS BETANCOURT.

Sworn to and subscribed before me May 21st, 1898.

J. M. PHIPPS,

Prize Commissioner.

(Endorsed :) Filed May 26th, 1898. E. O. Locke, clerk.

16 In the District Court of the United States, Southern District.
of Florida.

THE UNITED STATES

vs.

SCHOONER " LOLA " AND CARGO.

} Prize.

This cause having come on to be heard upon the liable and proofs and testimony taken *in preparatorio*, and all due proceedings having

been had and proclamation having been duly made in open court, and Thomas Betancourt having appeared and claimed said schooner Lola and cargo upon the grounds of her being a fishing vessel and not liable to capture, and the being fully heard, and it appearing to the court that the said schooner "Lola" and cargo are enemy's property, now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said schooner "Lola" and cargo be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, *Judge*.

Key West, Florida, May 30th, 1898.

(Endorsed :) U. S. district court, southern dist. of Fla. United States vs. Schr. Lola. Decree of condemnation. Filed May 30, 1898. E. O. Locke, clerk.

17 The United States District Court, Southern District of Florida.

THE UNITED STATES }
against
THE "LOLA." }

A motion having been made in behalf of the owners of the above-named vessel to open the decree of condemnation and sale and to allow a claim to be filed, and said motion having been argued by counsel for the vessel and for the Government, it is now—

Ordered that the decree of condemnation and sale heretofore made herein be vacated and set aside, and that leave be, and hereby is, granted to the owners of the vessel to file a claim in the name of the master on or before May 30, 1898.

Key West, May 28, 1898.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsed :) U. S. district court, southern district of Florida. United States vs. Schr. "Lola." Order setting former decree aside. Filed May 28th, 1898. E. O. Locke, clerk.

18 United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA }
against
THE "LOLA." } Claim.

And now comes Thomas Betancourt, master and lawful bailee of the fishing boat Lola, and interviewing for the interest of Sebers Gouzales in the said fishing boat, her tackle, apparel, and furni-

ture, and in her fish, as the same are attached as prize at the instance of the United States, he claims the same accordingly; and the said claimant avers that before and at the time of the alleged capture of the said vessel and fish the above-named Sibors Gonzales was the *bona fide* owner of the said vessel, her tackle, apparel, and furniture, and of one-third of said fish, and that the other two-thirds of said fish belonged to this claimant and the other members of the crew, all of whom are Cubans, — prior to the recognition of Cuban independence were Spanish subjects, and that no other person is the owner of said vessel or fish, and that the claimant is the lawful bailee of both the vessel and fish. He further avers that said vessel and fish under the general law and the proclamation of the President of April 26th, 1898, were privileged and exempt from capture and condemnation as a fishing vessel, with her catch, and he denies that the vessel and fish are lawful prize of war.

Wherefore he prays leave to defend accordingly and to show cause why the said vessel and fish at the time of said capture were not liable to seizure and condemnation as prize of war.

THOMAS BETANCOURT.

Sworn to and subscribed before me this 28 day of May, 1898.

J. OTTO, *D'y Clerk.*

CONVERS & KIRLIN,

Proctors for Claimants.

19 United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA }

against

THE "LOLA."

} Test Affidavit.

SOUTHERN DISTRICT OF FLORIDA, ss :

Thomas Betancourt, being duly sworn, says :

1. I am master of the fishing boat Lola and lawful bailee of the vessel and her fish. The vessel belongs to Sibors Gonzales, of Havana, a native from Cuba domiciled in Cuba at the time of the recognition of the independence of the Cuban people by Congress, and is used exclusively in the gulf of Mexico for catching small fish. Her keel length is about 51 feet and her tonnage about 35 tons. The fishing is done on shares, one-third of the catch belonging to the owner and two-thirds to the crew. The fish now on board are thus owned. They are kept and sold alive.

2. I left Havana on the last trip April 11th and proceeded to Campeche sound, off Yucatan. We fished there 8 days and then started back to Havana with the catch. We were stopped by the blockading squadron near Havana on May 26th, 1898. Prior to said time we were unaware of the existence of war or any blockade. We were stopped by the United States ship Cincinnati and brought into Key West as prize of war by the "Dolphin." No effort was

made by the vessel to run the blockade after we learned of its existence.

3. I have been master of the said vessel for 4 years. During that time the vessel has carried no cargo save her catches of fish, and has carried no passengers.

Her crew consisted of 6 persons, including the captain. She is of schooner rig, and has two masts.

THOMAS BETANCOURT.

Sworn to and — before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk*.

(Endorsed :) U. S. district court, southern dist. of Fla. U. S. vs. The Lola. Claim & test affidavit. Convers & Kirlin, proctors for cl't. Filed May 28th, 1898. E. O. Locke, clerk.

21 In the District Court of the United States, Southern District of Florida.

UNITED STATES	} Prize.
vs.	
SCHR. LOLA & CARGO.	

This cause coming on to be heard and a decree *pro confesso* having been entered (and final decree of condemnation and forfeiture pronounced)—

Now, on motion of Convers and Kirlin, said decree is set aside, and — is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered and adjudged and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, *Judge*.

Key West, Florida, May 30, 1898.

(Endorsed :) U. S. district court, southern dist. of Fla. United States vs. Schr. "Lola." Decree. Filed May 30th, 1898. E. O. Locke, clerk.

22 Whereupon a writ of *venditioni exponas* was issued to the marshal of said district, commanding him forthwith to sell at public auction the said prize vessel "Lola," her tackle, &c., and to deposit the proceeds thereof with the assistant treasurer of the United States at New York, to the credit of said court.

Which writ was afterwards by the marshal returned, showing the proceeds of said vessel to be the sum of eight hundred dollars, which sum was by the marshal deposited as commended.

23 United States District Court, Southern District of Florida.

The President of the United States to John F. Horr, Esq., marshal of said district, Greeting:

Whereas the fishing smack "Lola" has been libelled in said court and is now in custody of this court by virtue of a writ of attachment issued out of said court; and whereas such proceedings have been had that said vessel and cargo have been ordered by decree of said court to be sold: Now, therefore, you are hereby commanded after due notice to sell at public auction the said fishing smack "Lola" and meke return thereof to this court and deposit the proceeds of sale in the assistant treasury of the United States at New York to be disposed of according to law.

Witness the Honorable James W. Locke, judge of said court, at Jacksonville, this 30th day of May, A. D. 1898.

[SEAL.]

E. O. LOCKE, *Clerk*.

(Marshall's Return.)

Received this within writ this 30th day of May, 1898, and executed same by selling said vessel "Lola" at public auction for \$800.00 and deposited same with the assistant treasurer of the United States, as therein directed.

Aug. 19, 1898.

JOHN F. HARR,
U. S. Marshal.

(Endorsed:) United States vs. Smack "Lola." *Vend. ex.* Issued May 30th, 1898. Returned & filed Aug. 19th, 1898. E. O. Locke, clerk.

24

Statement.

"Lola."

1899.

July 11.	Drew a/c watchman.....	224.00	
	" " prize com.....	25.00	
	" " interpurter	5.00	
19.	Deposited proceeds credit ass't treasur. N. Y..		800
Sept. 28.	Drew for marshall.....	78.29	
Oct. 8.	" " clerk.....	41.75	

25 United States District Court, Southern District of Florida.

THE UNITED STATES, Libellant, Appellees,	} Prize.
<i>against</i>	
THE FISHING SMACK "LOLA;" TOMAS BETANCOURT, Claimant, Appellant.	

And now comes Tomas Betancourt, claimant, —, considering himself ag-grieved by the decision and decree of condemnation herein and alleging error in the said decree, appeals therefrom to the Supreme

Court of the United States. He presents herewith an assignment of errors complained of and a bond for costs, with surety, in the sum approved by the court, and thereupon prays that his said appeal may be allowed, and that the record and all proceedings herein may be duly certified to the Supreme Court of the United States in accordance with the rules and practice in such cases made and provided, to the end that the said appeal may be heard and determined by the said court.

Dated August 15th, 1899.

TOMAS BETANCOURT, *Claimant*,
By CONVERS & KERLIN,
His Proctors.

CONVERS AND KERLIN,
Proctors for Appellant.

Upon reading the foregoing notice and prayer of appeal and the assignment of errors and bond on appeal, it is ordered that the appeal of the claimant, Tomas Betancourt, be, and the same is hereby, allowed.

Dated August 15th, 1899.

JAMES W. LOCKE, *U. S. Judge.*

26 United States District Court, Southern District of Florida.

THE UNITED STATES, Appellee,	} Prize.
<i>against</i>	
THE FISHING SMACK "LOLA;" TOMAS BETANCOURT, Claimant, Appellant.	

Assignment of Error.

The claimant assigns error to the final decision and decree of the United States district court for the southern district of Florida, herein as follows:

First. For that the court omitted and refused to hold that the "Lola" was not subject to condemnation as lawful prize of war.

Second. For that the court omitted and refused to find that the vessels, whilst engaged in fishing, as disclosed by the record, were exempt from capture under the terms of the President's proclamation dated April 26th, 1898, providing that the war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, in accordance with — the fishing vessels in the situation of the "Lola" at the time of her capture are exempt from capture as prize.

Third. For that the court omitted and refused to hold that the vessels and cargoes were the property of Cubans, whose freedom and independence was recognized by the joint resolution of Congress approved April 20th, 1898, and entitled accordingly to
27 exemption from capture as the property of neutrals, or persons entitled to the rights, privileges, and immunities of neutrals.

Fourth. For that the court omitted and refused to allow further proofs of the grounds for the exemption from capture set forth in the claim and test affidavits.

CONVERS & KERLIN,
Proctors for Appellant.

Endorsed: Order allowing appeal and assignment of errors.
Filed Aug. 18th, 1899. E. O. Locke, clerk.

28 District Court of the United States, Southern District of Florida.

THE UNITED STATES OF AMERICA }
vs.
FISHING SMACK LOLA. }

Know all men by these presents that we, Tomas Betancourt, as principal, and the American Surety Company of New York, of 100 Broadway, New York city, New York, and also represented by manager and attorney at Key West, Florida, as surety, are held and firmly bound unto The United States of America, the plaintiffs in the above-entitled action, in the sum of two hundred and fifty dollars, to be paid to the United States of America or their assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas the above-bounden Tomas Betancourt has appealed to the Supreme Court of the United States from the decree of the United States district court, southern district of Florida, bearing date the 30th day of May, 1898, in a suit in which The United States of America are plaintiffs and the Fishing Smack Lola is defendant:

Now, therefore, the condition of this obligation is such that if the above-bounden appellant, Tomas Betancourt, shall prosecute said appeal with effect and pay all costs which may be awarded
29 against him as said appellant if the appeal is not sustained,
then this obligation shall be void; otherwise the same shall remain in full force and effect.

TOMAS BETANCOURT,
By CONVERS & KERLIN, *Proctors.*
AMERICAN SURETY COMPANY OF
NEW YORK,
By DAVID B. SICKELS, *Vice-President.*
SAMUEL S. PERRY, *Attorney.*

[SEAL.]

[Three documentary stamps, 4, $\frac{1}{2}$, 3.]

STATE AND COUNTY OF NEW YORK, ss:

On this 14th day of August, 1899, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did

depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by law; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said corporation; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said David B. Sickels, vice-president.

[SEAL.]

K. J. PIERCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk Co-.

30 At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each of them is hereby authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company, in the performance of contracts other than insurance policies and executing or guaranteeing its business of guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, ss:

I, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolutions.

Given under my hand and the seal of the company, at the city of New York, this 14th day of Aug., 1899.

[SEAL.]

SAMUEL S. PERRY, *Attorney.*

American Surety Company of New York.

Incorporated April 14th, 1884.

General offices, 100 Broadway.

Financial Statement June 30th, 1899.

Resources:

Real estate and improvements	\$3,013,930.66
Stocks and bonds.....	1,107,979.10
Bills receiv.....	114,797.40
Cash in banks and offices.....	815,776.94
Premiums in course of collection.....	192,736.02
Accrued interest and rents	38,466.51
	<hr/>
	\$5,283,686.63

Liabilities:

Bills and accounts payable.	\$49,129.13
Claims in process of adjustment.....	209,907.64
31 Premiums reserve requirement....	626,233.97
Undivided profits.....	898,415.89
Surplus	1,000,000.00
Capital stock... ..	2,500,000.00
	<hr/>
	\$5,283,686.63

STATE OF NEW YORK, }
 County of New York, } ss:

David B. Sickels, being duly sworn, says that he is vice-president of the American Surety Company of New York; that said company is a corporation duly created, existing, and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of the said State applicable to said company, and is duly qualified to act as surety under such laws; that said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13th, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company is worth \$1,000.00 over and above all its debts and liabilities and such exemptions as may be allowed by law.

DAVID S. SICKELS.

Subscribed and sworn before me this 14th day of Aug., 1899.

[SEAL.]

K. J. PEIRCEY.

Notary Public.

Endorsed: Bond on appeal. The within bond approved as to amount and sufficiency of surety. James W. Locke, judge. Filed Aug. 18, 1899. E. O. Locke, clerk.

32 District Court of the United States, Southern District of Florida.

THE UNITED STATES }
 vs. } Prize.
 THE SMACK "LOLA." }

Claimants of the cargo herein having appealed from the decree of condemnation herein rendered to the Supreme Court of the United States, it is ordered that the clerk of this court transmit to the said Supreme Court of the United States for inspection, together with the apostles herein, the documents of the ship and cargo in his official keeping, the same to be returned to this court when no longer required.

JAMES W. LOCKE, *Judge.*

August 28th, 1899.

33 UNITED STATES OF AMERICA, ss :

To United States, Greeting :

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, D. C., on Sept. 21st, 1899, pursuant to an order allowing appeal entered and filed in the clerk's office of the district court of the United States for the southern district of Florida, wherein the Spanish Schooner "Lola," Tomas Betancourt, claimant, is appellant and The United States, libellant, is appellee, to show cause, if any there be, why the judgment against the said Schooner "Lola" mentioned, entered on the thirtieth day of May, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable James W. Locke, judge of the district court of the United States, this 22nd day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

JAMES W. LOCKE,
Judge U. S. District Court, Southern District of Florida.

Endorsed: Spanish Schooner "Lola," appellant, vs. The United States, appellee. Citation. Filed Sept. 1st, 1899. E. O. Locke, clerk.

Marshal's Return.

Received this citation the 25th day of August, 1899, at Jacksonville, Fla., and executed same by service of copy on H. H. Buckman, ass't United States attorney, on Sept. 1st, 1899, at same time exhibiting

original at Jacksonville, the U. S. attorney being absent from city on official business.

JOHN F. HERR, *U. S. Marshal*,
By KATHARINE PILLSBURY,
Office Deputy.

34 In the United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA	} In Prize.
<i>vs.</i>	
SPANISH SMACK "LOLA" AND CARGO.	

I, Eugene O. Locke, clerk of the above-mentioned court, hereby certify the foregoing pages, numbered from one to thirty-three, inclusive, constitute a complete transcript of the record of the proceedings, proofs, and assignment of errors in the above-entitled cause, as appears from record and files of this office.

Seal District Court of the	Witness my hand and the seal of this
United States, Southern	said court this second day of September,
District of Florida.	1899, at Jacksonville, in said district.

EUGENE O. LOCKE, *Clerk*,
By LOUIS STARKE, *Deputy*.

35 UNITED STATES OF AMERICA, *ss* :

To United States, Greeting :

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, D. C., on Sept. 21, 1899, pursuant to an order allowing appeal entered and filed in the clerk's office of the district court of the United States for the southern district of Florida, wherein the Spanish Schooner "Lola," Tomas Betancourt, claimant, is appellant and The United States, libellant, is appellee, to show cause, if any there be, why the judgment against the said Schooner "Lola" mentioned, entered on the thirtieth day of May, 1898, should not be corrected and speedy justice should not be done to the parties on that behalf.

Seal District Court of the	Witness the Honorable James W.
United States, Southern	Locke, judge district court of the United
District of Florida.	States, this 22nd day of August, in the
	year of our Lord one thousand eight
	hundred and ninety-nine.

JAMES W. LOCKE,
Judge U. S. District Court, Southern District of Florida.

[Endorsed :] Mar. d'k't, 328. United States district court, southern district of Florida. Spanish Schooner "Lola," appellant, *vs.* The United States, appellee. Citation. Filed Sep. 1, 1899. E. O. Locke, clerk.

Received this citation the 25th day of August, 1899, at Jacksonville, Fla., and executed same by service of a copy on H. H. Buckman, ass't United States attorney, on Sept. 1st, 1899, at same time exhibiting original, at Jacksonville, the U. S. attorney being absent from city on official business.

JOHN F. HERR, *U. S. Marshal*,
By KATHARINE PILLSBURY,
Office Dep'y.

Endorsed on cover: File No., 17,510. S. Florida D. C. U. S. Term No., 396. The Spanish Schooner "Lola," Tomas Betancourt, claimant, appellant, vs. The United States. Filed September 9th, 1899.

